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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/357,349	07/14/1999	STEFAN LEO JOZEF MASURE	36813.3	9100

35893 7590 03/13/2006

GREENBERG TRAURIG, LLP  
ONE INTERNATIONAL PLACE, 20th FL  
ATTN: PATENT ADMINISTRATOR  
BOSTON, MA 02110

EXAMINER

TURNER, SHARON L

ART UNIT	PAPER NUMBER
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1649

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	Application No.	Applicant(s)	
	09/357,349	MASURE, STEFAN LEO JOZEF	
	Examiner	Art Unit	
	Michael P. Woodward	1600	

All participants (applicant, applicant's representative, PTO personnel):

(1) Michael P. Woodward. (3) \_\_\_\_\_

(2) Gene Rzucidlo (Applicant's Representative). (4) \_\_\_\_\_

Date of Interview: 11 January 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☒ Yes e) ☐ No.

If Yes, brief description: attached.

Claim(s) discussed: 7.

Identification of prior art discussed: \_\_\_\_\_

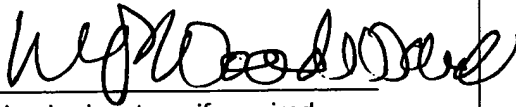
Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant was requesting information regarding his request for an interference with US 6,734,284. The attached e-mails constitute a record of the discussions which have taken place..

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiner's Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Woodward, Michael

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From: Rzucidlo, Gene [gcr@hunton.com]  
Sent: Wednesday, January 11, 2006 11:13 AM  
To: Woodward, Michael  
Subject: RE: The aberrant advisory action case.



Alignments  
he Janssen al

Dear Dr. Woodward:

Attached are the alignments for both the polynucleotide and the polypeptide sequences in our applications and the NSGene patents. For the polynucleotide we refer to claim 2 a) and the polypeptide to claim 1 of the respective NSGene patents.

Gene

-----Original Message-----

From: Woodward, Michael [mailto:Michael.Woodward@USPTO.GOV]  
Sent: Monday, January 09, 2006 11:40 AM  
To: Rzucidlo, Gene  
Subject: RE: The aberrant advisory action case.

I spoke with Janet Andres after we spoke. I have also looked at the claims again and still do not find identical sequences. What have I missed?

-----Original Message-----

From: Rzucidlo, Gene [mailto:gcr@hunton.com]  
Sent: Monday, January 09, 2006 11:39 AM  
To: Woodward, Michael  
Subject: The aberrant advisory action case.

Sorry to be a pest but I'm being pressed by the client. Do you have any estimate as to when the Examiner will issue a paper actually entering our response to the

final rejection. Also have you reconsidered the possibility of a species/species interference based on the individual sequence claims

Gene Rz

-----Original Message-----

From: Woodward, Michael [mailto:Michael.Woodward@USPTO.GOV]

Sent: Friday, January 06, 2006 9:35 AM

To: Rzucidlo, Gene

Subject: RE: The aberrant advisory action case.

ok will look into that. must have missed it.

-----Original Message-----

From: Rzucidlo, Gene [mailto:gcr@hunton.com]

Sent: Fri 1/6/2006 7:27 AM

To: Woodward, Michael

Cc:

Subject: The aberrant advisory action case.

Dear Dr. Woodward:

Thanks for discussing this case with me yesterday. I would like to point out that the NSGene patent has a dependent claim to the same sequence as the sequence in my client's application. Could set up the interference with the correct sequence as the Count and indicate that all of the NSGene patent claims correspond to the Count. Correspondence does not need to be two-way as is the case for interference in fact.

Gene C. Rzucidlo  
Hunton & Williams  
200 Park Av.  
52nd. Fl.

New York, NY 10166  
Dir. Tel. 212-309-1214  
Fax. 212-309-1100  
email [gcr@hunton.com](mailto:gcr@hunton.com)

## Alignments for the Janssen and NsGene sequences

### Nucleotide sequence alignments

Figure 1 provides an alignment of Seq ID No.1 of the Janssen case (Janssen) with nucleotides 379-717 of Seq ID No.3 as claimed in claim 2 a) of NsGene patent US 6,593,133 (NsGene)

Fig.1

```

      *           20           *           40           *
Janssen : [REDACTED] : 54
NsGene : [REDACTED] : 54
          GCTGGGGGCCCCGGGCAGCCGCGCTCGGGCAGCGGGGGCGCGGGGCTGCCGCCTG

      60           *           80           *           100
Janssen : [REDACTED] : 108
NsGene : [REDACTED] : 108
          CGCTCGCAGCTGGTGCCGGTGCGCGCGCTCGGCCTGGGCCACCGCTCCGACGAG

      *           120           *           140           *           160
Janssen : [REDACTED] : 162
NsGene : [REDACTED] : 162
          CTGGTGCGTTTCCGCTTCTGCAGCGGCTCCTGCCGCCGCGCGCGCTCTCCACAC

      *           180           *           200           *
Janssen : [REDACTED] : 216
NsGene : [REDACTED] : 216
          GACCTCAGCCTGGCCAGCCTACTGGGCGCCGGGGCCCTGCGACCGCCCCCGGGC

      220           *           240           *           260           *
Janssen : [REDACTED] : 270
NsGene : [REDACTED] : 270
          TCCCGGCCCGTCAGCCAGCCCTGCTGCCGACCCACGCGCTACGAAGCGGTCTCC

      280           *           300           *           320
Janssen : [REDACTED] : 324
NsGene : [REDACTED] : 324
          TTCATGGACGTCAACAGCACCTGGAGAACCGTGGACCGCCTCTCGGCCACCGCC

      *
Janssen : [REDACTED] : 339
NsGene : [REDACTED] : 339
          TGCGGCTGCCTGGGC
```

Polypeptide sequence alignments

Figure 2 provides an alignment of Seq ID No.3 of the Janssen case (Janssen) with Seq ID No.2 of the NsGene case (NsGene). The residues are numbered in accordance with Seq ID No.2 of the NsGene patent US 6,734,284.

Fig.2

```

          *          -76          *          -56
Janssen :                                     :
NsGene  : MPALWPTLAALALLSSVAEASLGSA PRSPAPREGPPPVLASP : -54

          *          -36          *          -16
Janssen :                                     :
NsGene  : AGHLPGGRTARWC SGRARRRRHFSARAPAACTPICSSPRV : -12

          *          1    5    8          *          25
Janssen :      AGGPGSRARAAGARGCRLRSQ LVPVRA LGLGHRSD ELV : 38
NsGene  : RAARLGGAARSGSGGA-GCRLRSQ LVPVRA LGLGHRSD ELV : 30
          AAR GG   R    GA GCRLRSQ LVPVRA LGLGHRSD ELV

          35  39    45          *          65    72
Janssen : RFRFC SGSCRRARSPHDSLASLLGAGALRPPPGSRPVSQPC : 80
NsGene  : RFRFC TGSCPRARSPHDSLASLLGAGALRPPPGSRPVSQPC : 72
          RFRFC3GSC RARSPHDSLASLLGAGALRPPPGSRPVSQPC

          *          85          *          101
Janssen : CRPTRYEAVSFMDVNSTWRTVDRLS ATACGCLG : 113
NsGene  : CRPTRYEAVSFMDVNSTWRTVDRLS ATACGCLG : 105
          CRPTRYEAVSFMDVNSTWRTVDRLS ATACGCLG

```

In this alignment;

- the seven conserved residues specified in claim 1(a) of US 6,734,284 are highlighted in red;
- the amino acids as listed in claim 1(b) of US 6,734,284 are colored blue;
- the repeat and motifs mentioned in claim 1(c) of US 6,734,284 are underlined; and
- from the below alignment of AA<sub>1</sub>-AA<sub>105</sub> of the NsGene sequence with the Janssen sequence, it can be seen that but for 6 residues the sequences are identical, i.e. 99 out of 105 residues are identical. In other words the Janssen sequence has 94% sequence identity with AA<sub>1</sub>-AA<sub>105</sub> of SEQ ID No.2 as claimed in claim 1(d) of US 6,734,284.



```

                *           20           *           40
Janssen : ARAGARGCRLRSQLVPVRALGLGHRSDLVRFRC3GSC : 40
NsGene   : -SGSGAGCRLRSQLVPVRALGLGHRSDLVRFRC3GSC : 39
                G   GCRLRSQLVPVRALGLGHRSDLVRFRC3GSC

                *           60           *           80
Janssen : RRARS PHDLSLASLLGAGALRPPPGSRPVSQPCCRPTRYE : 80
NsGene   : RRARS PHDLSLASLLGAGALRPPPGSRPVSQPCCRPTRYE : 79
                RARS PHDLSLASLLGAGALRPPPGSRPVSQPCCRPTRYE

                *           100
Janssen : AVSFMDVNSTWRTVDRLSATAACGCLG : 106
NsGene   : AVSFMDVNSTWRTVDRLSATAACGCLG : 105
                AVSFMDVNSTWRTVDRLSATAACGCLG
```